

## **IC 29-3-7**

### **Chapter 7. Qualification and Bonding Requirements for Guardians**

#### **IC 29-3-7-1**

##### **Guardian's bond; amount; collateral in lieu of sureties on bond; reduced bonds**

Sec. 1. (a) Unless the court finds that a bond is unnecessary and enters an order to that effect, or unless the appointed guardian is a bank or trust company (as defined in IC 28-1-1-3), a guardian must execute and file a bond relating to the duties of the guardian's office. Unless otherwise directed by the court, the bond must be in an amount that is not less than the amount determined under STEP THREE of the following STEPS:

STEP ONE: Enter the aggregate value of the guardianship property.

STEP TWO: Add to the amount entered under STEP ONE one (1) year's estimated income.

STEP THREE: From the sum determined under STEP TWO subtract the value of any property that the guardian, by express limitation of power, lacks the power to sell, convey, or encumber without a court order.

(b) The court, instead of sureties on a bond, may accept other collateral for the performance of the bond, including a pledge of securities or a mortgage of the land.

(c) The court may fix the bond at an amount less than that provided under subsection (a), but the amount fixed must, in the court's opinion, provide adequate protection to the property of the protected person. In fixing a reduced bond, the court may do any of the following:

(1) Direct the guardian to invest all, or a part of, the property subject to the guardian's control in:

(A) stocks, bonds, or other securities of any corporation, public or private, which are listed or admitted to trading on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, the Pacific Coast Stock Exchange, or any other exchange regulated by the Securities and Exchange Commission; or

(B) securities that are obligations issued or guaranteed by the United States.

(2) Direct the guardian to place all, or a part of, the property subject to the guardian's control in a savings account. However, the court may require property to be held in a manner that requires either the joint authorization of the guardian and the guardian's surety or an order of the court to remove the funds from the account.

(3) Direct the guardian to transfer all, or a part of, the property subject to the guardian's control to a bank or trust company organized under the laws of Indiana or of the United States and operating a bank or trust company located within Indiana to

administer the estate as an agent for the guardian.

(4) Direct the guardian to:

(A) transfer any or all stocks, bonds, and securities subject to the guardian's control only after obtaining an order of the court directing the transfer; and

(B) require that notice of this restriction on the transfer of such stocks, bonds, and securities be placed upon the certificates evidencing those stocks, bonds, and securities.

(5) Direct the guardian to comply with all, part, or any combination of the requisites specified in subdivisions (1) through (4).

(6) Direct the guardian to take any other action that the court determines necessary to provide adequate protection to the property of the protected person.

*As added by P.L.169-1988, SEC.1.*

### **IC 29-3-7-2**

#### **Bond requirements; liability; consent to jurisdiction; proceedings against sureties**

Sec. 2. (a) The following requirements apply to all bonds on which the guardian is primary obligor:

(1) Unless otherwise provided by the terms of the bond, sureties are jointly and severally liable with the primary obligor and with each other.

(2) By executing the bond, the surety consents to the jurisdiction of the court that issued letters in any proceeding pertaining to the fiduciary duties of the primary obligor and naming the surety as a party respondent. Notice of any proceeding under this article must be delivered to the surety or mailed by registered or certified mail to the address listed with the court at the place where the bond is filed and to the address as then known to the petitioner.

(3) On petition of a successor to the primary obligor or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the primary obligor.

(4) The bond is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(b) No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

*As added by P.L.169-1988, SEC.1.*

### **IC 29-3-7-3**

#### **Letters of guardianship**

Sec. 3. (a) Letters of guardianship, temporary or otherwise, shall be issued to the person entitled to receive them when:

(1) the guardian, if an individual, has filed bond if required and taken and subscribed before the clerk or any other officer

authorized to administer oaths, an oath or affirmation that the guardian will faithfully discharge the duties of the guardian's trust according to law; or

(2) the guardian, if other than an individual, has filed bond if required and has:

(A) taken and subscribed before the clerk or any other officer authorized to administer oaths an oath or affirmation that it will faithfully discharge the duties of its trust according to law; and

(B) filed an acceptance of the appointment, duly executed and acknowledged by one (1) of its officers.

(b) The oath, and if other than an individual also the acceptance, shall be filed and recorded as a part of the proceedings of the guardianship.

(c) If the court limits or restricts the authority of the guardian or creates a limited guardianship, the letters must so state under IC 29-3-8.

*As added by P.L.169-1988, SEC.1.*

#### **IC 29-3-7-4**

##### **Acceptance of appointment as submission to personal jurisdiction**

Sec. 4. By accepting appointment, a guardian and the guardian's attorney submit personally to the jurisdiction of the court in any proceeding relating to the guardianship.

*As added by P.L.169-1988, SEC.1.*

#### **IC 29-3-7-5**

##### **Guardianship property; possession by guardian; transfer of property interest; process against property**

Sec. 5. (a) A guardian shall take possession of the guardianship property, title to which shall remain in the protected person subject to the right of the guardian to possess and dispose of the property as provided by law.

(b) The interest of the protected person in guardianship property is not transferable or assignable by the protected person. An attempted transfer or assignment by the protected person, though ineffective to affect property rights, may generate a claim under IC 29-3-10.

(c) The property referred to in subsections (a) through (b) is not subject to levy, garnishment, or similar process other than an order issued in a proceeding on a claim under IC 29-3-10.

*As added by P.L.169-1988, SEC.1.*

#### **IC 29-3-7-6**

##### **Evidence of possessory and disposition rights in guardianship property; real property of guardianship; filing of letters of appointment or termination orders**

Sec. 6. (a) Letters are evidence that the guardian has all, and the protected person does not have any, rights to possess and dispose of the guardianship property. An order terminating a guardianship is

evidence that the protected person has all, and the guardian does not have any, rights to possess and dispose of the guardianship property.

(b) Subject to the requirements of general statutes governing the filing or recordation of documents of title to real estate, letters, and orders terminating the same may be filed or recorded in the county where the real estate in question is located to give record notice of rights of possession and disposal as between the guardian and the protected person.

*As added by P.L.169-1988, SEC.1.*

#### **IC 29-3-7-7 Version a**

##### **Persons prohibited from being appointed or from serving as a guardian**

*Note: This version of section effective until 7-1-2014. See also following version of this section amended by P.L.158-2013, SEC.303, effective 7-1-2014, and following version of this section amended by P.L.214-2013, SEC.22, effective 7-1-2014.*

Sec. 7. A court may not appoint a person to serve as the guardian or permit a person to continue to serve as a guardian if the person:

(1) is a sexually violent predator (as described in IC 35-38-1-7.5);

(2) was at least eighteen (18) years of age at the time of the offense and was convicted of child molesting (IC 35-42-4-3) or sexual misconduct with a minor (IC 35-42-4-9) against a child less than sixteen (16) years of age:

(A) by using or threatening the use of deadly force;

(B) while armed with a deadly weapon; or

(C) that resulted in serious bodily injury; or

(3) was less than eighteen (18) years of age at the time of the offense and was convicted as an adult of:

(A) an offense described in:

(i) IC 35-42-4-1;

(ii) IC 35-42-4-2;

(iii) IC 35-42-4-3 as a Class A or Class B felony;

(iv) IC 35-42-4-5(a)(1);

(v) IC 35-42-4-5(a)(2);

(vi) IC 35-42-4-5(a)(3);

(vii) IC 35-42-4-5(b)(1) as a Class A or Class B felony;

(viii) IC 35-42-4-5(b)(2); or

(ix) IC 35-42-4-5(b)(3) as a Class A or Class B felony;

(B) an attempt or conspiracy to commit a crime listed in clause (A); or

(C) a crime under the laws of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in clauses (A) and (B).

*As added by P.L.131-2009, SEC.5.*

#### **IC 29-3-7-7 Version b**

##### **Persons prohibited from being appointed or from serving as a guardian**

*Note: This version of section amended by P.L.158-2013, SEC.303, effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014, and following version of this section amended by P.L.214-2013, SEC.22, effective 7-1-2014.*

Sec. 7. A court may not appoint a person to serve as the guardian or permit a person to continue to serve as a guardian if the person:

(1) is a sexually violent predator (as described in IC 35-38-1-7.5);

(2) was at least eighteen (18) years of age at the time of the offense and was convicted of child molesting (IC 35-42-4-3) or sexual misconduct with a minor (IC 35-42-4-9) against a child less than sixteen (16) years of age:

(A) by using or threatening the use of deadly force;

(B) while armed with a deadly weapon; or

(C) that resulted in serious bodily injury; or

(3) was less than eighteen (18) years of age at the time of the offense and was convicted as an adult of:

(A) an offense described in:

(i) IC 35-42-4-1;

(ii) IC 35-42-4-2 (repealed);

(iii) IC 35-42-4-3 as a Class A or Class B felony (for crimes committed before July 1, 2014) or as a Level 2 or Level 4 felony (for crimes committed after June 30, 2014);

(iv) IC 35-42-4-5(a)(1);

(v) IC 35-42-4-5(a)(2);

(vi) IC 35-42-4-5(a)(3);

(vii) IC 35-42-4-5(b)(1) as a Class A or Class B felony (for crimes committed before July 1, 2014) or as a Level 2, Level 3, or Level 4 felony (for crimes committed after June 30, 2014);

(viii) IC 35-42-4-5(b)(2); or

(ix) IC 35-42-4-5(b)(3) as a Class A or Class B felony (for crimes committed before July 1, 2014) or as a Level 2, Level 3, or Level 4 felony (for crimes committed after June 30, 2014);

(B) an attempt or conspiracy to commit a crime listed in clause (A); or

(C) a crime under the laws of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in clauses (A) and (B).

*As added by P.L.131-2009, SEC.5. Amended by P.L.158-2013, SEC.303.*

#### **IC 29-3-7-7 Version c**

#### **Persons prohibited from being appointed or from serving as a guardian**

*Note: This version of section amended by P.L.214-2013, SEC.22, effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014, and preceding version of this section amended by P.L.158-2013, SEC.303, effective 7-1-2014.*

Sec. 7. A court may not appoint a person to serve as the guardian or permit a person to continue to serve as a guardian if the person:

(1) is a sexually violent predator (as described in IC 35-38-1-7.5);

(2) was at least eighteen (18) years of age at the time of the offense and was convicted of child molesting (IC 35-42-4-3) or sexual misconduct with a minor (IC 35-42-4-9) against a child less than sixteen (16) years of age:

(A) by using or threatening the use of deadly force;

(B) while armed with a deadly weapon; or

(C) that resulted in serious bodily injury; or

(3) was less than eighteen (18) years of age at the time of the offense and was convicted as an adult of:

(A) an offense described in:

(i) IC 35-42-4-1;

(ii) IC 35-42-4-2 (before its repeal);

(iii) IC 35-42-4-3 as a Class A or Class B felony;

(iv) IC 35-42-4-5(a)(1);

(v) IC 35-42-4-5(a)(2);

(vi) IC 35-42-4-5(a)(3);

(vii) IC 35-42-4-5(b)(1) as a Class A or Class B felony;

(viii) IC 35-42-4-5(b)(2); or

(ix) IC 35-42-4-5(b)(3) as a Class A or Class B felony;

(B) an attempt or conspiracy to commit a crime listed in clause (A); or

(C) a crime under the laws of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in clauses (A) and (B).

*As added by P.L.131-2009, SEC.5. Amended by P.L.214-2013, SEC.22.*